

Decision 02-02-050

February 21, 2002

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Complaint of MFS Intelnet of California, Inc. (U5172C) against Pacific Bell (U1001C) and Request for Temporary Restraining Order and Preliminary Injunction.

C.97-09-032  
(Filed September 19, 1997)

**ORDER DENYING APPLICATION FOR  
REHEARING OF DECISION NO. 01-09-053**

**I. SUMMARY**

By this Decision we deny rehearing of Decision (D.) No. 01-09-053 (the “Decision”) sought by Pacific Bell Telephone Company (“Pacific”). MCI is the successor in interest to NFS Intelnet of California, Inc. (NFS). NFS’s original complaint in this proceeding was for breach of contract by Pacific for failure to pay reciprocal compensation for termination of calls to internet service providers. In D.00-04-034, we ordered Pacific to pay damages to MCI for the breach of contract. However, we did not specify the interest rate owed for the termination of the calls to internet service providers in Ordering Paragraph 3 of that decision. Thereafter, MCI filed a petition for modification of D.00-04-034 to provide that Pacific should pay to MCI interest on the underlying contractual obligation at the rate of 10% per year, as required by Civil Code Section 3289. In the Decision, we granted the petition for modification and directed Pacific to pay interest of 10% as required by the statute.

## II. DISCUSSION

Applicant makes the identical arguments here that it made in its opposition to the Petition for Modification. First, Pacific argues that MCI failed in its complaint to ask for interest at the 10% statutory rate, in violation of Rule 10 of the Commission's Rules of Practice and Procedure. We dealt with this argument at length beginning at page 3 of the Decision, and will not repeat that discussion here. However, we will reiterate that under Civil Code Section 3289, unless the terms of a contract provide otherwise, the legal rate of prejudgment interest for breach of contract is 10% per annum. Pacific would prefer to pay the amount of interest which it itself received from the escrow account into which it paid the sums due MCI. However, as the Commission pointed out, we did not order Pacific to open an escrow account and are therefore not constrained by the interest rate that Pacific received from that account. Further, as we pointed out at page 4 of the Decision, although MCI could have formulated its request more precisely, there is no indication anywhere in the pleadings that MCI intended to forgo the interest legally due it from Pacific. Moreover, our Rule 10 cannot supersede the interest rate for breach of contract specified by the State Legislature.

Applicant next argues again that MCI's Petition for Modification was, in reality, an untimely application for rehearing and should have been denied on that basis alone. Again, the argument is unpersuasive. As we pointed out in the decision, at page 5, MCI's petition did not allege legal error in D.00-04-034, but rather requested clarification of that decision as to the appropriate interest rate to be levied. As such, the Petition entirely comported with Rule 47 of the Commission's Rules of Practice and Procedure.

Finally, Pacific alleges that the Decision fails to address issues material to the proceeding, in violation of Public Utilities Code Section 1705, specifically whether its agreement with MCI is governed by federal rather than state law. Again, we dealt with this question in the Decision at page 5 where we stated that Pacific failed to allege, and that we were unaware of any provision in federal law which either prescribes the interest rate which must apply to an interconnection agreement or prohibits the application of state law when the underlying agreement is silent. Here, Applicant only makes a vague

allegation that this proceeding is governed by federal law without specifying which law it is referring to. As such, the allegation does not meet the requirements of Public Utilities Code Section 1732, which requires that petitions for rehearing set out with specificity the errors alleged.

### **III. CONCLUSION**

Applicant has demonstrated no legal or factual error in the Decision, and rehearing should be denied.

**THEREFORE IT IS ORDERED** that:

1. Rehearing of Decision No. 01-09-053 is denied.
2. This proceeding is closed.

This Order is effective today.

Dated: February 21, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners